

(j) When the contracting officer mistakenly receives an invoice first, or is specified in the contract as the first recipient of the invoice, and the contract requires payment with thirty (30) days from receipt of a “proper invoice” (as defined by FAR 32.902), the contracting officer shall review the invoice to determine whether or not it is proper; and, if so, shall approve the invoice and submit it to the fiscal office within sixteen (16) days from the date of receipt. When the contracting officer is the first recipient of the invoice and the contract establishes a payment due date of more than thirty (30) days after receipt, the contracting officer shall review, approve, and submit the “proper invoice” to the fiscal office at least fourteen (14) days prior to the payment due date (unless the contracting officer and fiscal office agree, prior to contract award, to a longer period).

[54 FR 43966, Oct. 30, 1989]

PART 333—PROTESTS, DISPUTES, AND APPEALS

Subpart 333.1—Protests

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 333.1—Protests

SOURCE: 50 FR 23133, May 31, 1985, unless otherwise noted.

333.101 Definitions.

Filed, as used in this subpart, means receipt in the contracting office, the immediate Office of the Secretary, the

General Accounting Office (GAO), or the General Services Board of Contract Appeals (GSBCA), as the case may be.

333.102 General.

(a) Contracting officers shall consider all protests or objections regarding the award of a contract, whether submitted before or after award, provided the protests are filed in a timely manner and are submitted by interested parties. To be considered timely, protests based on alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In the case of negotiated acquisitions, alleged improprieties which do not exist in initial solicitations, but which are subsequently incorporated by amendment, must be protested not later than the next closing date for receipt of proposals following the incorporation. In other cases, protests shall be filed not later than ten (10) Federal Government working days after the basis for protest is known or should have been known, whichever is earlier. Provided a timely protest has been filed initially with the contracting officer, any subsequent protest to the Secretary or GAO filed within ten (10) Federal Government working days of notification of adverse action will be considered. Written confirmation of all oral protests shall be requested from protestants and must be timely filed.

(d)(1) Office of Acquisition and Grants Management (OAGM) has been designated as the headquarters office to serve as the liaison for protests lodged with GAO. Within OAGM, the Departmental Protest Control Officer (DPCO) has been designated as the individual to be contacted by GAO.

(2) The Office of General Counsel—Business and Administrative Law Division (OGC–BAL) has been designated to serve as the liaison for protests lodged with the GSBCA.

(3) Each contracting activity shall designate a protest control officer to serve as an advisor to the contracting officer and to monitor protests from the time of initial notification until the protest has been resolved. The protest control officer should be a senior

acquisition specialist in the headquarters acquisition staff office. In addition, contracting activities should designate similar officials within their principal components to the extent practicable and feasible. A copy of each appointment and termination of appointment of protest control officers shall be forwarded to the Director, OAGM.

[50 FR 23133, May 31, 1985, as amended at 54 FR 24344, June 7, 1989; 56 FR 47003, Sept. 17, 1991]

333.103 Protests to the agency.

(a)(2) The contracting officer is authorized to make the determination, using the criteria in FAR 33.103(a), to award a contract notwithstanding the protest after obtaining the concurrence of the contracting activity's protest control officer and OGC-BAL. If the protest has been lodged with the Secretary, is addressed to the Secretary, or requests referral to the Secretary, approval shall also be obtained from the Director, OAGM before making the award.

(3) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with the applicable provisions in 333.102(a). In the following cases, written protests received by the contracting officer before award shall be forwarded, through acquisition channels, to the DPCO for processing. Files concerning these protests shall be submitted, in duplicate, by the most expeditious means, marked "IMMEDIATE ACTION—PROTEST BEFORE AWARD", and contain the documentation referenced in 333.104(a)(3).

(i) The protestant requests referral to the Secretary of Health and Human Services;

(ii) The protest is known to have been lodged with the Comptroller General or the Secretary, or is addressed to either; or

(iii) The contracting officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the protest be considered by the Secretary or the Comptroller General.

Otherwise, submissions of protests to the DPCO may be dispensed with by the contracting officer if he/she is reasonably satisfied that the protest is groundless. In this instance, the contracting officer, with the concurrence of the contracting activity's protest control officer and OGC-BAL, may disallow the protest.

(4) Protests received after award shall be treated as indicated in 333.103(a)(3), above; however, if the files are to be submitted to the DPCO for action, they shall be marked "IMMEDIATE ACTION—PROTEST AFTER AWARD".

[50 FR 23133, May 31, 1985, as amended at 54 FR 24344, June 7, 1989; 56 FR 47003, Sept. 17, 1991; 57 FR 35473, Aug. 10, 1992]

333.104 Protests to GAO.

(a) *General.* (1) A protestor shall be required to furnish a copy of its complete protest to the contracting officer no later than the first working day after the protest is filed with GAO. Immediately upon receiving a copy of the complete protest, the contracting officer shall telephonically notify the contracting activity's protest control officer, who, in turn, shall immediately notify the DPCO. The contracting officer shall provide the name of the protestor, the solicitation number, the date and time the protest was received from the protestor, and any other significant information.

(3) Protests lodged with GAO, whether before or after award, shall be processed by the DPCO. Protest files shall be prepared by the contracting office and distributed as follows: two copies to the DPCO, one copy to the contracting activity's protest control officer, and one copy to OGC-BAL. Files shall include the following documentation:

(i) The contracting officer's statement of facts and circumstances, including a discussion of the merits of the protest, and conclusions and recommendations, including documentary evidence on which they are based.

(ii) A copy of the IFB or RFP.

(iii) A copy of the abstract of bids or proposals.

(iv) A copy of the bid or proposal of the successful offeror to whom award